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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 **OAKLAND DIVISION**

15 In re DYNAMIC RANDOM ACCESS) Case No. M-02-1486-PJH
16 MEMORY (DRAM) ANTITRUST) MDL No. 1486
17 LITIGATION)
18 This Document Relates to:)
19 ALL INDIRECT PURCHASER ACTIONS)
and)
20 *State of California et al. v. Infineon*)
Technologies AG, et al.)
21 *State of New York v. Micron Technology Inc., et*)
al.)
22 *State of California et al. v. Samsung Electronics*)
Co., Ltd., et al.)
23 *State of California et al. v. Winbond Electronics*)
Co.)
24 *Petro Computer Systems, Inc. v. Hitachi, Ltd.*)
25 *Petro Computer Systems, Inc. v. Mitsubishi*)
Electric Corporation, et. al.)
26)
27)
28)

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF SETTLEMENTS, PLANS OF DISTRIBUTION AND CLAIMS PROTOCOLS, CERTIFYING SETTLEMENT CLASSES, FINALLY ADOPTING SPECIAL MASTER'S REPORT AND RECOMMENDATIONS, PARTS I AND II; FINAL JUDGMENT OF DISMISSAL WITH PREJUDICE

Case No. C 06-4333 PJH ✓
Case No. C 06-6436 PJH c
Case No. C 07-1347 PJH c
Case No. C 07-2589 PJH c
Case No. C 12-5213 PJH c
Case No. C 12-5214 PJH c

[PROPOSED] ORDER RE FINAL APPROVAL OF CLASS ACTION SETTLEMENTS, PLANS OF DISTRIBUTION, ADOPTION OF SPECIAL MASTER'S REPORT AND JUDGMENT – CASE NO. M-02-1486-PJH

The Indirect Purchaser Plaintiffs and the Attorneys General have jointly moved the Court to:

(1) Grant final approval to settlements with defendants Samsung, Winbond, Infineon, Elpida, NEC, Micron, Mosel, Hynix, Nanya, Toshiba, Hitachi, and Mitsubishi, as those entities are defined in their respective Settlement Agreements (collectively, the “Settlements” and the “Settling Defendants”) and certify the settlement classes defined in the Settlement Agreements pursuant to Rule 23, Federal Rules of Civil Procedure;

(2) Grant final approval to the plans for distributing the settlement proceeds to members of the Indirect Purchaser Settlement Class and to members of the Government Purchaser Settlement Classes (“Plans of Distribution”) that are recommended in the “Report and Recommendations of Special Master, Part I: Settlement Class Certifications And Plans Of Allocation And Distribution Of The Settlement Proceeds To The Settlement Classes” (“Report, Part I”), filed January 8, 2013 (Dkt. No. 2132) at ¶¶ 24, and 293 – 363;

(3) Grant final approval to the protocols for claims processing for the Indirect Purchaser Settlement Class that were recommended in the “Report and Recommendations of Special Master, Part II: Notice Programs, Claim Procedures and Processing” (“Report, Part II”), filed June 24, 2013 (Dkt. No. 2147) at ¶¶ 29 – 38;

(4) Adopt, as a final matter, the findings of fact, conclusions of law and recommendations contained in the Special Master's Report, Part I, and in the Special Master's Report, Part II, as to the process employed in arriving at and fixing the protocols for claims processing for the Indirect Purchaser Settlement Class pursuant to Rule 53(f)(2), Federal Rules of Civil Procedure.

A hearing was held on June 25, 2014, and these matters having come on before the Court to determine whether to finally approve the Settlements, the plans of distribution and the claims protocols, and whether to adopt as a final matter the findings, conclusions and recommendations in the Report, Parts I and II. Six (6) objections were filed on behalf of a total of thirteen (13) members of the Indirect Purchaser Settlement Class. These objections were directed to the certification of the

1 Indirect Purchaser Settlement Class, the form of notice to that Class, and the plan of distribution
2 proposed for that Class. The substance of these objections falls broadly into the following
3 categories: (1) that the Indirect Purchaser Settlement Class fails to satisfy the requirements of Rule
4 23(b)(3) of the Federal Rules of Civil Procedure because it includes residents of states whose courts
5 construe their antitrust laws in accordance with *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977)
6 (“non-repealer states”); (2) that the proposed plan of distribution for the Indirect Purchaser
7 Settlement Class is unfair and unreasonable because it provides for the payment of claims from
8 residents of non-repealer states *pro rata* with the claims of residents of states whose courts or
9 legislatures have determined that their antitrust laws are not constrained by *Illinois Brick* (“repealer
10 states”); (3) that the proposed plan of distribution for the Indirect Purchaser Settlement Class is
11 unfair and unreasonable because it contains contingent provisions that under certain circumstances
12 would trigger the *cy pres* distribution of a portion of the settlement proceeds; (4) that neither the
13 settlements nor the plan of distribution can be approved until the contingent *cy pres* recipients are
14 determined; and (5) that the notice given to the Indirect Purchaser Settlement Class was insufficient
15 because it did not provide putative class members with information from which to compute the
16 amount of money that they will receive from the settlement funds. No objections were raised to the
17 certification of the Government Purchaser Settlement Classes, to the plans of distribution
18 recommended by the Special Master for those classes, or to the claims protocols for the Indirect
19 Purchaser Settlement Class. No objectors appeared at the hearing.

20 The Court having carefully reviewed the Settlement Agreements, and Plaintiffs' motions for
21 final approval of the settlements, approval of the plans of distribution and claims processing
22 protocols and the adoption of the Report Parts I and II (Dkt. Nos. 2213 and 2215), the objections
23 raised to the approval of the Settlements, certification of the Indirect Purchaser Settlement Class, the
24 plan of distribution recommended by the Special Master for the Indirect Purchaser Settlement Class,
25 and to the class notice (Dkt. Nos. 2198, 2199, 2200, 2201, 2202, 2204, 2225, 2226 and 2228), and
26 the Plaintiffs' responses to these objections in their motions for final approval and for adoption of
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1 the plans of distribution and claims protocols, the arguments of counsel, and the records on file in
2 this action, and having addressed these objections and other issues at the hearing, the Court has
3 rejected these objections and determined that: (1) the Settlements as set forth in the Settlement
4 Agreements with the Settling Defendants should be given final approval; (2) the plans of
5 distribution for the Indirect Purchaser Settlement Class and the Government Purchaser Settlement
6 Classes, as set out in the Report, Part I, should be approved and adopted by this Court; (3) the claims
7 processing protocols for the Indirect Purchaser Settlement Class, as set out in the Report, Part II,
8 should be approved and adopted by this Court; (4) Plaintiffs' motion for final adoption of the
9 findings of fact, conclusions of law and recommendations set out in the Report, Parts I and II should
10 be granted; and (5) there is no just reason for delay in the entry of Judgment, which shall constitute a
11 final adjudication of this case on the merits as to the Settling Defendants. Accordingly, good cause
12 appearing therefor, it is:

13 ORDERED, ADJUDGED AND DECREED that:

14 1. The Court has jurisdiction over the subject matter of this litigation, and all actions
15 within this litigation, and over the parties to the Settlement Agreements, including all members of
16 the Indirect Purchaser Settlement Class, the Government Purchaser Settlement Classes, the
17 Plaintiffs, and the Settling Defendants, and any person or entity claiming by, for, or through the
18 Settling Parties with regard the Released Claims, as defined in the Settlement Agreements.

19 2. The following classes are certified for settlement purposes only, pursuant to Rule 23,
20 Federal Rules of Civil Procedure, bearing in mind that this litigation presented a series of difficult
21 factual, legal and procedural issues, many of which remained undecided at the time of the
22 Settlements. The Settlements resolve the litigation to give certainty to the parties, and nothing in
23 this Order, other than the findings and conclusions of the Court as expressly set forth in this Order,
24 resolves those issues:

25 The Indirect Purchaser Settlement Class: All natural persons and
26 non-governmental entities, who, at any time during the period
27 from January 1, 1998 through December 31, 2002, purchased
28 dynamic random access memory ("DRAM") devices and

1 components, including all products containing DRAM, anywhere
2 in the United States indirectly from the defendants, their parents,
3 subsidiaries and affiliates. Excluded from this definition are
4 defendants and their parents, subsidiaries and affiliates, legal
representatives, successors, assigns or co-conspirators; all
governmental entities; any judicial officer presiding over the
settled litigation and the members of his/her immediate family
and judicial staff.

5 The Samsung/Winbond Government Purchaser Settlement Class:

6 All state government entities, all political subdivisions and all
7 public colleges and universities in Class States Alaska, Delaware,
8 Ohio and Pennsylvania, all political subdivisions in New Mexico
9 and all political subdivisions, the University of California and the
State Bar of California in Class State California who purchased
DRAM or DRAM-containing products directly or indirectly from
Samsung and Winbond between January 1, 1998 and December
31, 2002;

10 The Multi-Defendant Government Purchaser Settlement Class:

11 All political subdivisions in Class State New Mexico and all
12 political subdivisions, the University of California and the State
13 Bar of California in Class State California who purchased DRAM
14 or DRAM-containing products directly or indirectly from
Infineon, Elpida, NEC, Mosel, Micron, Hynix, Nanya, Mitsubishi,
Toshiba and Hitachi between January 1, 1998 and December 31,
2002.

15 3. Within the context of and for the purposes of the approval of the Settlements, the
16 Court finds that the requirements of Rule 23(a), Federal Rules of Civil of Procedure, have been
17 satisfied by each of the above-described classes in that: (a) there are numerous putative class
18 members, making joinder of all class members impracticable; (b) there are questions of fact and law
19 that are common to all members of the class; (c) the claims of the named plaintiffs who are class
20 representatives are typical of the claims of the absent members of the class; (d) the named plaintiffs
21 who are class representatives have and will fairly and adequately protect the interests of the absent
22 members of the class; and (e) the counsel for the class are skilled and experienced litigators who
23 have and will adequately advance the interests of the class. The Court adopts as a final matter the
24 findings of fact and conclusions of law set forth in the Report, Part I, as to satisfaction of the
25 requirements of Rule 23(a) by each of the above-described classes, as if fully set forth herein.

26 4. Within the context of and for the purposes of the approval of the Settlements, the
27 Court further finds that the requirements of Rule 23(b)(2) and (b)(3), Federal Rules of Civil
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1 Procedure, have been satisfied for settlement purposes by each of the above-described classes in
2 that: (a) the defendants have acted on grounds that apply generally to the class; (b) questions of fact
3 and law common to the class members predominate over any questions affecting only the claims of
4 individual class members; and (c) a class action is superior to other available methods for the fair
5 and efficient adjudication of this controversy. The Court adopts as a final matter the findings of fact
6 and conclusions of law set forth in the Report, Part I, as to satisfaction of the requirements of Rule
7 23(b)(2) and (b)(3) by each of the above-described classes, as if fully set forth herein.

8 5. The Court hereby appoints as a final matter the plaintiffs named in the *Petro*
9 Complaint as the representatives of the Indirect Purchaser Settlement Class, and Indirect Purchasers'
10 Co-Lead Counsel, Cooper & Kirkham, Gustafson Gluek, The Mogin Law Firm and Straus & Boies,
11 as counsel for the class. The Court adopts as a final matter the findings of fact and conclusions of
12 law set forth in the Report, Part I, as to the qualification of these firms to serve as class counsel, as if
13 fully set forth herein.

14 6. The Court hereby appoints as a final matter as the representatives of the
15 Samsung/Winbond Government Purchaser Settlement Class, the States of Alaska, Delaware, Ohio
16 and Pennsylvania, and for California class members, the City and County of San Francisco, Santa
17 Clara County and the Los Angeles Unified School District, and for New Mexico class members, the
18 Rio Rancho Public Schools. The Court further appoints as a final matter as the representatives of
19 the Multi-Defendant Government Purchaser Settlement Class, for California class members, the City
20 and County of San Francisco, Santa Clara County and the Los Angeles Unified School District, and
21 for New Mexico class members, the Rio Rancho Public Schools. The Court appoints as a final
22 matter Emilio E. Varanini, Deputy Attorney General of the California Attorney General's Office, as
23 counsel for each of the government purchaser classes. The Court adopts as a final matter the
24 findings of fact and conclusions of law set forth in the Report, Part I, as to the qualification of Mr.
25 Varanini to serve as class counsel, as if fully set forth herein.

7. The “Indirect Purchaser Plaintiffs’ and Attorneys General’s Notice of Exclusions,” filed May 15, 2014 (Dkt. No. 2205) set out the names of five (5) individuals who elected to exclude themselves from the Indirect Purchaser Plaintiff Settlement Class and the *parens patriae* actions, and the two (2) Oregon governmental entities who elected to exclude themselves pursuant to the Oregon notice provisions. Such persons/entities are not included in or bound by this Final Judgment. Such persons/entities are not entitled to any recovery from the settlement proceeds obtained through the Settlements.

8. Prior to receipt of these requests for exclusion, Notice of this litigation and the proposed settlements was given to putative members of the Indirect Purchaser Settlement Class, including those covered by the *parens patriae* actions, the Government Purchaser Settlement Classes, and by the Oregon Attorney General pursuant to the notice requirements of OR. REV. STAT. §646.775 (2)(a), all in accordance with this Court’s “Order Granting Preliminary Approval of Joint Settlements, Conditionally Certifying Settlement Classes, Adopting Special Master’s Report and Recommendations, Parts I & II, Disseminating Notice To the Settlement Classes, and Scheduling Fairness Hearing,” filed January 17, 2014 (Dkt. No. 2174), (“Preliminary Approval Order”). The Court confirms its prior findings that the Notices given pursuant to the Preliminary Approval Order were the best notice practicable under the circumstances. The Court further confirms its prior findings that said notices provided due, adequate, and sufficient notice of these proceedings and of the matters set forth herein, including the proposed settlements set forth in the Settlement Agreements, and that said notice fully satisfied the requirements of due process, the Federal Rules of Civil Procedure, and all applicable state laws.

9. The Court finds that the Settling Defendants have provided a notice of proposed settlement that complies with the requirements of the Class Action Fairness Act, 28 U.S.C. §§ 1711-15.

10. The Court hereby finally approves and confirms the Settlements set forth in the Settlement Agreements with the Settling Defendants and finds that said settlements are, in all

1 respects, fair, reasonable, and adequate pursuant to Rule 23(e), Federal Rules of Civil Procedure,
2 and all applicable state laws.

3 11. The Court hereby dismisses on the merits and with prejudice the individual, *parens*
4 *patriae*, governmental entity, and class claims asserted by the Plaintiffs against the Settling
5 Defendants, with all parties to bear their own costs and attorneys' fees except as provided for in the
6 Agreements and by order of this Court. All parties will seek the dismissal of any state court actions
7 covered by the terms and provisions of the Settlement Agreements.

8 12. As provided in each of the Settlement Agreements, the Settling Defendants and all
9 persons and entities who are defined as Releasees are hereby and forever released and discharged
10 with respect to any and all claims or causes of action which the Plaintiffs and members of the
11 certified Settlement Classes and any person or entity defined in the Settlement Agreements as
12 Releasors had or have arising out of or related in any way to any of the Released Claims as defined
13 in the Settlement Agreements.

14 13. Private claims against the Settling Defendants and Releasees are released by two
15 Settling Plaintiff groups: the class of Indirect Purchasers as certified above and the Attorneys
16 General through their *parens patriae* claims. The releases are as follow:

17 The Settling Defendants and Releasees, as defined above, shall be completely
18 released, acquitted, and forever discharged from any and all claims, demands,
19 actions, suits, causes of action, whether class, individual, or otherwise in nature
20 (whether or not any Settling Plaintiff has objected to the settlement or makes a
21 claim upon or participates in the Settlement Fund), whether directly,
22 representatively, derivatively or in any other capacity that Releasors, as defined
23 above, or each of them, ever had, now has, or hereafter can, shall, or may have on
24 account of, related to, or in any way arising out of, any and all known and
25 unknown, foreseen and unforeseen, suspected or unsuspected injuries, damages,
26 and the consequences thereof in any way arising out of or relating in any way to
27 any act or omission of the Settling Defendants Releasees (or any of them)
28 concerning the pricing, production, development, or sale of DRAM products or
products containing DRAM up to December 31, 2002, based on the conduct
alleged and causes of action asserted or that could have been asserted, in
complaints filed in the Actions by the Settling Plaintiffs, or in any similar action
filed in any federal or state court, including, without limitation, any claims arising

1 under any federal or state antitrust, unjust enrichment, unfair competition, trade
2 practice statutory or common law, and consumer protection law (to the extent that
3 a consumer protection claim would be based on allegations of an antitrust or
4 unfair competition violation) (the "Released Claims"). Releasees shall not, after
5 the date of this Agreement, seek to establish liability against any Settling
6 Defendants Releasee based, in whole or in part, upon any of the Released Claims,
7 or conduct at issue in the Released Claims. The Settling Parties contemplate and
8 agree that the Settlement Agreements may be pleaded as a bar to a lawsuit, and an
9 injunction may be obtained, preventing any action from being initiated or
10 maintained in any case sought to be prosecuted on behalf of indirect DRAM
11 purchasers with respect to the claims released in this paragraph. This release,
12 discharge, and covenant not to sue does not include claims by any of the Settling
13 Plaintiffs other than the claims set forth therein and does not include other claims,
14 such as those solely arising out of product liability or warranty claims in the
15 ordinary course of business.

16 Because both Settling Plaintiff groups are giving complete releases of the Released Claims, this
17 Court need not determine and has not determined which of the two Settling Plaintiff groups is
18 releasing or may release any of the Released Claims.

19 14. The Settling Defendants are enjoined for a period of three years from the execution
20 of their various Settlement Agreements from engaging in certain conduct specified therein, but
21 generally falling into the broad categories of price fixing, market allocation and bid rigging, with
22 respect to the sale of any DRAM product for delivery in the United States, which constitutes
23 horizontal conduct that are *per se* violations of Section 1 of the Sherman Act, including,
24 participating in meetings, conversations, and communications with each other and other DRAM
25 manufacturers (other than among affiliated entities) in the United States and elsewhere to discuss the
26 prices of DRAM to be sold to original equipment manufacturers of personal computers and servers
27 ("OEM customers") and exchanging information on sales of DRAM to OEM customers, for the
purpose of monitoring and enforcing adherence to agreed-upon prices. The Settling Defendants are
also required pursuant to the terms of their various Settlement Agreements to establish, within
ninety days of final approval, if not already established, and maintain for a period of three years
thereafter, a program to provide relevant antitrust compliance education to the Settling Defendants'
officers and employees with responsibility for pricing and sales of DRAM in and to the United

1 States regarding the legal standards imposed by federal and state antitrust laws, and to certify to a
2 designated representative of the plaintiffs by appropriate letter that it is fully compliant with the
3 provisions of their respective Settlement Agreements.

4 15. The Court hereby adopts and fixes the Plans for Distribution for the Indirect
5 Purchaser Settlement Class and the Government Purchaser Settlement Classes that are
6 recommended by the Special Master in the Report, Part I, at ¶¶ 24, and 293 – 363. The Court also
7 adopts as a final matter the findings of fact, conclusions of law and recommendations contained in
8 the Special Master’s Report, Part I, as to the process employed in arriving at and fixing, and the
9 fairness, reasonableness and adequacy of the Plans of Distribution for the Settlement Classes.

10 16. The Court hereby adopts and fixes the claims processing protocols for the Indirect
11 Purchaser Settlement Class that are recommended by the Special Master in the Report, Part II, at ¶¶
12 29 – 38. The Court also adopts as a final matter the findings of fact, conclusions of law and
13 recommendations contained in the Special Master’s Report, Part II, as to the process employed in
14 arriving at and fixing, and the fairness, reasonableness and adequacy of the claims processing
15 protocols for the Indirect Purchaser Settlement Class.

16 17. The Court has carefully and fully reviewed and considered all of the objections to the
17 proposed settlements, the objections to the certification of the Indirect Purchaser Settlement Class,
18 the objections to the proposed plan of distribution for the Indirect Purchaser Settlement Class and to
19 the form of notice to that Class, and, for the reasons set forth in Plaintiffs’ responses to the
20 objections, as further developed at the fairness hearing, the Court concludes that none of these
21 objections raises any grounds to decline certification of the Indirect Purchaser Settlement Class, to
22 deny final approval to the Settlements or to fail to adopt the plan of distribution for the Indirect
23 Purchaser Settlement Class, and accordingly the Court hereby OVERRULES each of the objections.

24 18. Without affecting the finality of this Judgment in any way, this Court hereby retains
25 continuing and exclusive jurisdiction over: (a) implementation of the terms and conditions of the
26 Settlement Agreements; (b) disposition of the Settlement Funds as defined in each Agreement and
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1 distribution to class members pursuant to further orders of this Court; (c) the designation of *cy pres*
2 recipients and the *cy pres* disposition of settlement funds should that become necessary; (d) the
3 Settling Defendants until the Final Judgment contemplated hereby has become effective and each
4 and every act agreed to be performed by the parties has been performed pursuant to the Settlement
5 Agreements; and (e) all parties and Releasors and Releasees for the purpose of enforcing and
6 administering the Settlement Agreements and the mutual releases, including the execution and filing
7 of any documents contemplated by, or executed in connection with, the Settlement Agreements.
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9 19. In the event that a settlement does not become effective in accordance with the terms
10 of any of the relevant Settlement Agreements, then the judgment shall be rendered null and void and
11 shall be vacated as to that Agreement, and in such event, all orders entered and releases delivered in
12 connection herewith shall be null and void and the parties to that Agreement shall be returned to
13 their respective positions *ex ante*.

14 20. The Court finds, pursuant to Rules 54(a) and (b), Federal Rules of Civil Procedure,
15 that this Final Judgment should be entered and further finds that there is no just reason for delay in
16 the entry of this Final Judgment, as a Final Judgment, as to the parties to the Agreements.
17 Accordingly, the Clerk is hereby directed to enter the Judgment of dismissal with prejudice as to
18 Settling Defendants, forthwith.

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20 Dated: June 27, 2014



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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re DYNAMIC RANDOM ACCESS MEMORY (DRAM) ANTITRUST LITIGATION)	Case No. M-02-1486-PJH MDL No. 1486
This Document Relates to:)	[PROPOSED] ORDER GRANTING AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS TO PLAINTIFFS; FINALLY ADOPTING SPECIAL MASTER'S REPORT AND RECOMMENDATIONS, PART III; FINAL JUDGMENT
ALL INDIRECT PURCHASER ACTIONS)	
and)	
<i>State of California et al. v. Infineon Technologies AG, et al.</i>)	
<i>State of New York v. Micron Technology Inc., et al.</i>)	Case No. C 06-4333 PJH
<i>State of California et al. v. Samsung Electronics Co., Ltd., et al.</i>)	Case No. C 06-6436 PJH
<i>State of California et al. v. Winbond Electronics Co.</i>)	Case No. C 07-1347 PJH
<i>Petro Computer Systems, Inc. v. Hitachi, Ltd.</i>)	Case No. C 07-2589 PJH
<i>Petro Computer Systems, Inc. v. Mitsubishi Electric Corporation, et. al.</i>)	Case No. C 12-5213 PJH Case No. C 12-5214 PJH

[PROPOSED] ORDER RE ATTORNEYS' FEES, COST AND INCENTIVE AWARDS, ADOPTION OF SPECIAL
MASTER'S REPORT AND JUDGMENT – CASE NO. M-02-1486-PJH

1	<i>Petro Computer Systems, Inc. v. Toshiba Corporation, et. al.</i>)	Case No. C 12-5215 PJH
2	<i>State of California et al., v. Toshiba Corporation et al.,</i>)	Case No. C 12-5230 PJH
3	<i>State of California et al., v. Mitsubishi Electric Corporation, et. al.</i>)	Case No. C 12-5229 PJH
4	<i>State of California et al., v. Hitachi, Ltd.</i>)	Case No. C 12-5231 PJH
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[PROPOSED] ORDER RE ATTORNEYS' FEES, COST AND INCENTIVE AWARDS, ADOPTION OF SPECIAL
MASTER'S REPORT AND JUDGMENT – CASE NO. M-02-1486-PJH

The Indirect Purchaser Plaintiffs' counsel and the Attorneys General (collectively, "Counsel") have moved the Court to:

(1) Award them an aggregate fee of \$77,680,000.00, which is 25% of the total of the Settling Defendants' settlement payments (the "Settlement Fund") of \$310,720,000.00, reimburse the Indirect Purchaser Plaintiffs' counsel litigation costs and expenses in the amount of \$6,338,232.00, reimburse the Attorneys General litigation costs and expenses in the amount of \$5,483,468.63, as identified in the "Indirect Purchaser Plaintiffs' And Attorneys Generals' Joint Application For Attorneys' Fees; Indirect Purchaser Plaintiffs' Application for Costs and Incentive Awards; And Attorneys Generals' Application for Costs," filed February 28, 2014 (Dkt. No. 2181) ("Joint Application"). (The supporting documentation for the Joint Application is Docket Nos. 2182 - 2185-9.)

(2) Award each of the named plaintiffs who served as class representatives in the lead private action, *Petro Computer Systems v. Micron Technology, Inc.*, C-05-02472-PJH, a payment, usually called an “incentive award,” of \$5,000.00, and award each of the plaintiffs in the other settled actions an incentive award of \$500.00.

(3) Adopt, pursuant to Rule 53(f), Federal Rules of Civil Procedure, as a final matter, the findings of fact, conclusions of law and recommendations contained in the Special Master's Report, Part III: Attorneys' Fees, Expenses and Incentive Awards, filed November 5, 2013 (Dkt. No. 2155) ("Report, Part III").

A hearing was held on June 25, 2014, and this matter came on before the Court to determine, *inter alia*, whether to award Counsel the requested aggregate fee, cost reimbursements and the plaintiffs' incentive awards, and whether to adopt as a final matter the findings, conclusions and recommendations in the Report, Part III. Four objections were filed to the request for an award of attorneys' fees. The substance of these objections fall broadly into the following categories: (1) that this is a "mega-fund" case where, as a matter of law, the fee award should be less than the Ninth Circuit benchmark fee of 25%; (2) the requested fee would be a "windfall" for the private counsel

1 in this case because a majority of the work was done by the Attorneys General; (3) the Court must,
2 as a matter of law, review counsel's individual contemporaneously maintained time records before
3 awarding a fee; and (4) any money that may be distributed *cypres* must be removed from the
4 computation of the "common fund." No objections were filed to the requests for cost
5 reimbursement or to the request for incentive awards to Plaintiffs. No objectors appeared at the
6 fairness hearing.

7 The Court having carefully reviewed and considered Plaintiffs' motion for attorneys' fees,
8 expenses and incentive awards (Dkt. No. 2186), the Joint Application, the Report Part III, Plaintiffs'
9 motion for final adoption of the Report, Part III (Dkt. No. 2187), the objections raised to the
10 requested attorneys' fee award (Dkt. Nos. 2199, 2200, 2201, 2204, 2226 and 2228), and the
11 Plaintiffs' responses to these objections (Dkt. No. 2221), the arguments of counsel and the records
12 on file in this action, and having fully addressed these objections and other issues at the hearing, the
13 Court has rejected these objections and determined that: (1) Plaintiffs' motion for an award of
14 attorneys' fees, expenses and incentive awards is GRANTED with the modification noted below;
15 and (2) Plaintiffs' motion for final adoption of the findings of fact, conclusions of law and
16 recommendations set out in the Report, Part III, is GRANTED with the modification noted below.
17 Accordingly, good cause appearing therefor, it is:

18 ORDERED, ADJUDGED AND DECREED that:

19 1. The Court has jurisdiction over the subject matter of this litigation, and all actions
20 within this litigation, and over the parties to the Settlement Agreements, including all members of
21 the Indirect Purchaser Settlement Class, the Government Purchaser Settlement Classes, the Plaintiffs
22 and the Settling Defendants, and any person or entity claiming by, for, or through the Settling
23 Parties with regard to the Released Claims, as defined in the Settlement Agreements.

24 2. Four (4) objections to the Joint Application were filed on behalf of a total of nine (9)
25 members of the Indirect Purchaser Settlement Class. The Court has carefully reviewed and
26

considered the objections to the requested attorneys' fee award, and hereby OVERRULES each of the objections as being without merit for the reasons stated in the "Indirect Purchaser Plaintiffs' and Attorneys General's Joint Reply Memorandum In Support of (1) Joint Application for Attorneys' Fees, Separate Requests for Expense Reimbursements and Incentive Awards and (2) Motion for Final Adoption of Special Master's Report, Part III: Attorneys' Fees, Expenses and Incentive Awards; Responses to Objections to Joint Fee Application," filed June 10, 2014 (Dkt. No. 2221) and for the reasons stated at the June 25, 2014 hearing.

3. The Court has reviewed the computation of the common fund made by Counsel and the Special Master and finds it reasonable. The Court has reviewed the summary of attorney and paralegal hours spent in the prosecution of these cases, and performed the lodestar cross-check required for a percentage of the fund fee award. The Court hereby ADOPTS as a final matter the findings of fact, conclusions of law and recommendations contained in the Special Master's Report, Part III, with the following modification. Counsel's Joint Application requested that the Court approve cost items totaling \$653,002.00, which are fees for the services of Berman DeValerio, a law firm appointed by the Special Master to advocate for the interests of resellers in the Indirect Purchaser Settlement Class during the negotiation of the plan of distribution, and Susman Godfrey, a law firm representing a specialty DRAM reseller that was invited by the Special Master to participate in those negotiations. The Special Master's Report, Part III, recommends that these fees be treated as recoverable cost items. However, the Court finds that it is more appropriate to include these fees within the fee award to counsel.

4. The Court hereby awards Counsel attorneys' fees in the amount of \$78,333,002.00 (approximately 25.2% of the Settlement Fund) together with interest earned on this amount at the same rate as that earned on the Settlement Fund until disbursed to Counsel.

5. The Court hereby awards Indirect Purchaser Plaintiffs' Counsel their litigation costs and expenses in the amount of \$5,685,230.00.

6. The Court hereby awards the Attorneys General their litigation costs and expenses in the amount of \$5,483,468.63.

7. The Court hereby awards each of the named plaintiffs in the *Petro* action an incentive award in the amount of \$5,000.00.

8. The Court hereby awards each of the named plaintiffs in the other settled actions an incentive award in the amount of \$500.00.

9. The Escrow Agent shall pay the attorneys' fees, litigation costs and expenses and incentive awards, together with interest as provided above, from the Settlement Fund.

10. The fees awarded shall be divided between Indirect Purchaser Plaintiffs' Counsel and the Attorneys General pursuant to the agreement negotiated during the proceedings before the Special Master.

11. The fees and litigation costs and expenses awarded to Indirect Purchaser Plaintiffs' Counsel shall be allocated among such plaintiffs' counsel by Indirect Purchaser Plaintiffs' Co-Lead Counsel in a manner which, in Co-Lead Counsel's good-faith judgment, reflects each such plaintiffs' counsel's contribution to the institution, prosecution and resolution of the litigation.

12. The fees and litigation costs and expenses awarded to the Attorneys General shall be allocated among the Attorneys General by their Executive Committee, including the Attorney General for the State of New York as well as Co-Lead Counsel and Liaison Counsel for the *Infineon* matter, in a manner which, in the good-faith judgment of the Executive Committee, including the Attorney General for the State of New York as well as the Co-Lead Counsel and Liaison Counsel for the *Infineon* matter, reflects each such Attorney General's contribution to the institution, prosecution and resolution of the litigation.

13. Without affecting the finality of this Order and Judgment in any way, this Court hereby retains continuing and exclusive jurisdiction over: (a) disposition of the Settlement Funds as

1 defined in each Settlement Agreement and distribution to class members, and potentially to *cy pres*
2 recipients, pursuant to further orders of this Court; and (b) hearing and ruling on any matters relating
3 to the plan of distribution of settlement proceeds and any matters regarding claims made by
4 members of the Settlement Classes to share in the settlement proceeds.

5
6 14. The Court finds, pursuant to Rules 54(a) and (b), Federal Rules of Civil Procedure,
7 that this Final Judgment as to the award of attorneys' fees, reimbursement of litigation costs and
8 expenses and incentive awards should be entered as a Final Judgment, and further finds that there is
9 no just reason for delay in the entry of this Final Judgment.

10
11 Dated: June 27, 2014



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE: DYNAMIC RANDOM ACCESS
MEMORY (DRAM) ANTITRUST
LITIGATION**

No. M-02-1486 PJH
MDL No. 1486

**THIS DOCUMENT RELATES TO:
ALL INDIRECT-PURCHASER ACTIONS
& STATE OF NEW YORK v. MICRON
TECHNOLOGY, et al. (No. C-06-6436-
PJH)**

No. C-06-4333 PJH

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by and between Toshiba Corporation and Toshiba America Electronic Components, Inc. and their affiliates and subsidiaries (collectively “Toshiba” or the “Settling Toshiba Defendants”) on the one hand, and the “Settling Plaintiffs” on the other hand. The “Settling Plaintiffs” are comprised of the Indirect Purchaser Plaintiffs, including all indirect purchasers of DRAM (including DRAM modules and products containing DRAM), anywhere in the United States at any time during the period January 1, 1998 and continuing through December 31, 2002 (the “Complaint Period”), the Governmental Purchaser Plaintiffs, and the persons and entities represented by the Attorneys General as defined below.

WHEREAS, the Settling Plaintiffs in these actions allege that the Settling Toshiba

1 Defendants participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of
2 DRAM at artificially high levels and to restrict output of DRAM in violation of Section 1 of the
3 Sherman Act, the California Cartwright Act, the California Unfair Competition Law and/or the
4 antitrust, unfair competition and/or consumer protection laws of all jurisdictions within the United
5 States; and
6

7 WHEREAS, the Settling Plaintiffs are prosecuting such claims in the above-captioned
8 actions and in the actions to be filed against the Settling Toshiba Defendants contemporaneously
9 with this Agreement, as well as various other actions filed and/or pending in federal and state
10 jurisdictions listed on Exhibit A hereto, all of which are referred to collectively as "the Actions,"
11 on their own behalf and on behalf of all Indirect Purchaser and Governmental Purchaser
12 Plaintiffs, as defined in paragraphs 2 and 3 below; and

13 WHEREAS, the Settling Plaintiffs have conducted an investigation into the facts and the
14 law regarding the Actions and have concluded that their claims are valid, but nevertheless believe
15 that resolving their claims against the Settling Toshiba Defendants according to the terms set
16 forth below is in the best interest of the Settling Plaintiffs; and

17 WHEREAS, the Settling Toshiba Defendants believe that none of them are liable for the
18 claims being asserted and that they have good defenses thereto, but nevertheless agree to enter
19 into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome
20 and protracted litigation, to obtain the releases, orders and judgment contemplated by this
21 Agreement, and to put to rest with finality all claims that have been or could have been asserted
22 against the Settling Toshiba Defendant Releasees, as defined below, based on or arising out of the
23 allegations of the Actions, as more particularly set out below;

24 NOW, THEREFORE, in consideration of the covenants, agreements and releases set forth
25 herein and for other good and valuable consideration, it is agreed by and among the undersigned
26 that all of the Actions be settled, compromised and dismissed on the merits with prejudice as to
27
28

1 the Settling Toshiba Defendant Releasees, as defined below, subject to the approval of the Court,
2 on the following terms and conditions, and incorporating the preceding clauses:

3 A. Definitions.

4 1. For purposes of this Agreement, "Indirect DRAM Purchases" is defined as any and
5 all purchases of DRAM or any product containing DRAM, anywhere in the United States or any
6 United States territory, or purchases of DRAM or any product containing DRAM from any seller
7 located in the United States or any United States territory, and which were not purchases made
8 directly from the Defendants, their parents, subsidiaries and affiliates.

9 2. For purposes of this Agreement, "Indirect Purchaser Plaintiffs" is defined as all
10 natural persons and nongovernmental entities, who at any time during the Complaint Period,
11 made Indirect DRAM Purchases. Excluded from this definition are all parties named as
12 defendants in any of the above-captioned actions and in the complaints to be filed against the
13 Settling Toshiba Defendants contemporaneously with this Agreement ("Defendants"), and their
14 parents, subsidiaries and affiliates; all governmental entities; any judicial officer presiding over
15 the Actions and the members of his/her immediate family and judicial staff; and all alleged co-
16 conspirators.

17 3a. For purposes of this Agreement, "Attorneys General" are defined as the following
18 States and Commonwealths acting in their sovereign or proprietary capacity, and the persons and
19 entities therein which they represent acting in their representative or *parens patriae* or any other
20 capacity, or acting pursuant to Federal Rule of Civil Procedure 23 as alleged in the Third
21 Amended Complaint filed in *State of California et. al. v. Infineon Technologies et al.*, C 06-4333
22 PJH, and in the complaint to be filed against the Settling Toshiba Defendants contemporaneously
23 with this Agreement by the following States: Arizona, Arkansas, California, Colorado, Florida,
24 Hawaii, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota,
25 Mississippi, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota,
26

1 Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia,
2 Washington, West Virginia and Wisconsin (“Plaintiff States”).
3

4 3b. For purposes of this Agreement, “Governmental Purchaser Plaintiffs” is defined as all
5 of the States named as Plaintiffs in *State of California et. al. v. Infineon Technologies et. al.*, Case
6 No. C-06-4333 PJH (N.D. Cal.), *State of New York v. Micron Technology, Inc., et al.*, Case No.
7 C-06-6436 PJH (N.D. Cal), and in the complaint to be filed against the Settling Toshiba
8 Defendants contemporaneously with this Agreement by the Plaintiff States in their sovereign or
9 proprietary capacities, as well as all state and local government entities in each of them, including
10 without limitation, state agencies and departments, public undergraduate and graduate education
11 institutions, political subdivisions such as K-12 school districts, cities, counties, utilities and
12 special districts, and including the plaintiffs in *City of Los Angeles et. al. v. Infineon Technologies*
13 *et. al.*, Case No. CGC 08-480561 (Cal. Superior Ct.), who at any time during the Complaint
14 Period purchased DRAM, including any product containing DRAM, anywhere in the United
15 States. The Governmental Purchaser Plaintiffs are represented by the Attorneys General of the
16 Plaintiff States, to the full extent permitted by state law and as alleged in *State of California et. al.*
17 *v. Infineon Technologies et. al.*, Case No. C-06-4333 PJH (N.D. Cal.), *State of New York v.*
18 *Micron Technology, Inc., et al.*, Case No. C-06-6436 PJH (N.D. Cal), and in the complaint to be
19 filed against the Settling Toshiba Defendants contemporaneously with this Agreement by Plaintiff
20 States, et al.
21

22 3c. For purposes of this Agreement, “Class of Governmental Purchaser Plaintiffs” shall
23 refer to those government entities represented by the Attorneys General of the Plaintiff States of
24 California and New Mexico acting in a class capacity pursuant to Rule 23 as alleged in the Third
25 Amended Complaint filed in *State of California et. al. v. Infineon Technologies et. al.*, C 06-4333
26
27

1 PJH, and in the complaint to be filed against the Settling Toshiba Defendants contemporaneously
2 with this Agreement by Plaintiff States, et al. Excluded from this definition are any judicial
3 officers presiding over the Actions and the members of his/her immediate family and judicial
4 staff; and all federal government entities.

5 4. For purposes of this Agreement, "DRAM" is defined to mean dynamic random access
6 memory devices and components, including without limitation, all types of EDO DRAM, fast-
7 page mode (FPM) DRAM, RLDRAM, synchronous dynamic random access memory
8 ("SDRAM"), Rambus dynamic random access memory ("RDRAM"), asynchronous dynamic
9 random access memory ("ASYNC") and double data rate dynamic random access memory
10 ("DDR") ("DRAM"), including modules containing DRAM, EDO DRAM, FPM DRAM,
11 RLDRAM, RDRAM, SDRAM, ASYNC, and/or DDR. For purposes of this Agreement,
12 "DRAM" does not include static random access memory ("SRAM") devices and components.

15 5. "Settling Toshiba Defendant Releasees" shall refer to the Settling Toshiba
16 Defendants, and to all of their respective past and present, direct and indirect, parents,
17 subsidiaries, affiliates; the predecessors, successors and assigns of any of the Settling Toshiba
18 Defendants; and each and all of the present and former principals, partners, officers, directors,
19 supervisors, employees, representatives, insurers, attorneys, heirs, executors, administrators, and
20 assigns of each of the foregoing.

21 6. "Releasors" shall refer to the Settling Plaintiffs and to their past and present officers,
22 directors, employees, agents, stockholders, attorneys, servants, representatives, corporate parents,
23 subsidiaries, affiliates, corporate partners, insurers and all other persons, partnerships or
24 corporations with whom any of the former have been, or are now, affiliated, and the predecessors,
25 successors, heirs, executives, administrators and assigns of any of the foregoing.

26 7. The "Settlement Fund" shall refer to the payment in the amount of \$7,250,000 in
27 United States funds to be made by the Settling Toshiba Defendants pursuant to paragraph 21 of
28

1 this Agreement, plus the payment in the amount of up to \$200,000 in United States funds to be
2 made by the Settling Toshiba Defendants pursuant to paragraph 26 of this Agreement, plus all
3 accrued interest on those payments.

4 8. "Co-Lead Counsel" shall refer to the following counsel for the Indirect Purchaser
5 Plaintiffs and to the following counsel for the Attorneys General:

6
7 Josef D. Cooper
8 Cooper & Kirkham, P.C.
9 357 Tehama Street, 2nd Floor
10 San Francisco, CA 94103

11
12 Timothy D. Battin
13 Straus & Boies, LLP
14 4041 University Drive
15 5th Floor
16 Fairfax, VA 22030

17
18 Daniel E. Gustafson
19 Gustafson Gluek PLLC
20 650 Northstar East
21 608 Second Avenue South
22 Minneapolis, MN 55402

23
24 Daniel J. Mogin
25 The Mogin Law Firm, P.C.
26 110 Juniper Street
27 San Diego, CA 92101

28
29 Kathleen Foote
30 Senior Assistant Attorney General
31 Office of the Attorney General of California
32 455 Golden Gate Avenue
33 San Francisco, CA 94102-3664

34
35 Lizabeth Brady
36 Chief, Multistate Antitrust Enforcement
37 Office of the Attorney General
38 Antitrust Division
39 PL-01, The Capitol
40 Tallahassee, FL 32399-1050

1
2 Blake L. Harrop
3 Senior Assistant Attorney General
4 Office of the Attorney General of Illinois
5 James R. Thompson Center
6 100 W. Randolph Street, 13th Floor
7 Chicago, IL 60601

8
9 Tim Nord
10 Senior Assistant Attorney General
11 Oregon Department of Justice
12 1162 Court Street NE
13 Salem, OR 97301-4096

14 Jeremy Kasha
15 Assistant Attorney General
16 Antitrust Bureau
17 Office of the Attorney General of New York
18 120 Broadway, 26th Floor
19 New York, New York 10271

20 9a. “Samsung Settlement Agreement” shall refer to the settlement agreement entered
21 into between the Settling Plaintiffs and defendants Samsung Semiconductor, Inc. and Samsung
22 Electronics Company Ltd. (collectively “Samsung”) as set forth in *In re DRAM Antitrust*
23 *Litigation*, Master File No. M-02-1486 PJH, MDL No. 1486, in which the Honorable Charles B.
24 Renfrew has been appointed as Special Master (See Docket Entry Nos. 1787—1789).

25 9b. “Winbond Settlement Agreement” shall refer to the settlement agreement entered
26 into between the Settling Plaintiffs and defendants Winbond Electronics Corporation and
27 Winbond Electronics Corporation America (collectively “Winbond”) as set forth in *In re DRAM*
28 *Antitrust Litigation*, Master File No. M-02-1486 PJH, MDL No. 1486, in which the Honorable
Charles B. Renfrew has been appointed as Special Master (See Docket Entry Nos. 1787—1789).

29 9c. “Multi-Defendant Settlement Agreement” shall refer to the settlement agreement
30 entered into between the Settling Plaintiffs and defendants Infineon Technologies AG and
31 Infineon Technologies North America Corp. (collectively “Infineon”), Elpida Memory, Inc. and
32 Elpida Memory (USA) Inc. (collectively “Elpida”), NEC Electronics America, Inc., presently
33
34

1 known as Renesas Electronics America Inc. (“NEC”), Mosel Vitelic Corp. and Mosel Vitelic, Inc.
2 (collectively “Mosel”), Micron Technology, Inc. and Micron Semiconductor Products, Inc.
3 (collectively “Micron”) and Hynix Semiconductor Inc. and Hynix Semiconductor America Inc.
4 (collectively “Hynix”), as set forth in *In re DRAM Antitrust Litigation*, Master File No. M-02-
5 1486 PJH, MDL No. 1486, in which the Honorable Charles B. Renfrew has been appointed as
6 Special Master (See Docket Entry No. 2099).

7 9.d. “Nanya Settlement Agreement” shall refer to the settlement agreement entered into
8 between the Settling Plaintiffs and defendants Nanya Technology Corporation and Nanya
9 Technology Corporation USA, Inc. (“collectively Nanya”) as set forth in *In re DRAM Antitrust*
10 *Litigation*, Master File No. M-02-1486 PJH, MDL No. 1486, in which the Honorable Charles B.
11 Renfrew has been appointed as Special Master (See Docket Entry No. 2101).

12 B. Approval of this Agreement and Dismissal
13 of Claims Against the Settling Toshiba Defendants.

14 10. The Settling Plaintiffs have not heretofore filed complaints against Toshiba in any
15 federal or state jurisdiction. Rather, the Settling Plaintiffs and Toshiba entered into tolling
16 agreements to suspend the running of all applicable statutes of limitations during the pendency of
17 discussions to settle the claims which Settling Plaintiffs have or might have against Toshiba based
18 on or arising out of the allegations of the Actions. Those discussions have resulted in this
19 Agreement. It is contemplated that within fifteen (15) days after the execution of this Agreement,
20 the Indirect Purchaser Plaintiffs and the Attorneys General will file actions against the Settling
21 Toshiba Defendants in the United States District Court for the Northern District of California.
22 Claims in the actions will be released upon the effective date of the Agreement. Counsel for the
23 Settling Toshiba Defendants specified in the signature block to this Agreement below will accept
24 service of these complaints on behalf of their clients and so indicate to the Court. Counsel for the
25 Settling Parties (as defined in Paragraph 11, below) will jointly request the Court to stay the
26 newly-filed actions against the Settling Toshiba Defendants pending completion of proceedings
27 before the Special Master and consideration of the fairness of this Settlement. The tolling
28

1 agreements currently in effect suspending the running of any statute of limitations against the
2 Settling Plaintiffs will remain in effect, without the need for extensions, until approval of this
3 Agreement becomes final, as defined in Paragraph 15 below, or, if approval of the Agreement
4 does not become final, until thirty (30) days after approval of the Agreement has been rejected
5 and all rights of appeal therefrom have expired.

6 11. The Settling Plaintiffs and the Settling Toshiba Defendants (“Settling Parties”), and
7 the Settling Parties’ counsel, shall use their best efforts to effectuate this Agreement and its
8 purpose, and secure the prompt, complete and final dismissal with prejudice of the Actions as to
9 the Settling Toshiba Defendant Releasees, but not as to any party that is not a Settling Toshiba
10 Defendant Releasee. The Settling Parties agree to take whatever further steps, if any, may be
11 necessary in this regard, including staying any federal and state court litigation immediately after
12 execution of this Agreement and implementation of this Agreement in federal and individual state
13 court actions.

14 12. Within fifteen (15) days after execution of this Agreement, Settling Plaintiffs shall
15 submit to the Court a proposed, stipulated order referring this settlement to a Special Master so
16 that the Special Master may issue a report and recommendation to the Court as to how the
17 Settlement Fund shall be divided, allocated and distributed consistent with this Agreement. The
18 Settling Parties also agree that the Court may refer issues concerning the award(s) of attorneys’
19 fees to the Special Master. The Special Master’s report(s) and recommendation(s) shall be issued
20 and submitted to the Court pursuant to Federal Rule of Civil Procedure 53. The Settling Parties
21 agree that the Court may appoint the same Special Master who is currently charged with issuing a
22 report and recommendation as to the Samsung, Winbond, Multi-Defendant and Nanya Settlement
23 Agreements. If the same Special Master is appointed, the Settling Toshiba Defendants agree not
24 to relitigate rulings already made by the Special Master prior to their first appearance before the
25 Special Master unless the Settling Toshiba Defendants raise issues, facts, or legal principles
26 unique to the Settling Toshiba Defendants. The Settling Plaintiffs agree that the Settling Toshiba
27 Defendants may raise as error in subsequent proceedings in the district court or in any reviewing
28

1 court any issue preserved by any settling defendant in the proceedings before the Special Master
2 prior to after the Settling Toshiba Defendants' first appearance in that matter. Within thirty (30)
3 days after the Court adopts, modifies, and/or rules on any objections to the Special Master's
4 report and recommendation regarding the division, allocation and distribution of the Settlement
5 Fund, the Settling Plaintiffs shall submit to the Court a motion for preliminary approval of the
6 settlement that shall include a proposed plan for how the settlement is to be divided, allocated and
7 distributed.

8

9 13a. The Settling Parties agree that, subject to Court approval, notice of this settlement
10 shall be directed to, among others, (1) a settlement class pursuant to Federal Rule of Civil
11 Procedure 23 and applicable state laws of all natural persons and non-governmental entities, who,
12 at any time during the period from January 1, 1998 through December 31, 2002, made Indirect
13 DRAM Purchases (as defined in this Agreement), and (2) the Attorneys General and the persons
14 and entities they represent, as set forth in the operative complaints in *State of California, et al. v.*
15 *Infineon Technologies AG, et al.*, Case No. C 06-4333 PJH (N.D. Cal.), *State of New York v.*
16 *Micron Technology, Inc., et al.*, Case No. C-06-6436 PJH (N.D. Cal.), *City of Los Angeles et. al. v.*
17 *Infineon Technologies et. al.*, Case No. CGC 08-480561 (Cal. Superior Ct.), and in the action to
18 be filed against the Settling Toshiba Defendants contemporaneously with this Agreement by
19 Plaintiff States, et al.

20

21 13b. The share of the costs of the Special Master, and the costs of notice and claims
22 administration, attributable to this Agreement (*see infra* paragraph 13c) shall be paid from the
23 Settlement Fund, to which the Settling Toshiba Defendants will make a contribution as set forth
24 in paragraph 26. The Settling Toshiba Defendants are not responsible for separately paying any
25 costs associated with the Special Master, notice, or claims administration, except as those costs
26 are paid from the funds provided for notice and claims administration pursuant to this Settlement
27

1 as set forth in paragraph 26. To the extent that notice and claims administration costs are actually
2 paid from these funds, under no circumstances will such expenditures be refunded to the Settling
3 Toshiba Defendants. To the extent that any amounts advanced by the Settling Toshiba
4 Defendants' portion of the Settlement Fund allocated for the expenses described in Paragraph 26
5 are not expended for any reason, those amounts shall be refunded to the Settling Toshiba
6 Defendants no later than thirty (30) days after costs of notice and administration have been paid.
7

8 13c. The Settling Plaintiffs will make a good faith effort to coordinate proceedings before
9 the Special Master, as well as notice and administration of this Settlement, with the proceedings
10 before the Special Master and notice and administration of the Samsung, Winbond, Multi-
11 Defendant and Nanya Settlement Agreements, and any other settlements that may be reached
12 with other current or former DRAM producers. If any coordinated proceedings take place before
13 the Special Master, or coordinated notice or claims administration is used, the Settling Toshiba
14 Defendants' share of the cost of the coordinated proceedings, notice and claims administration
15 shall be the cost of those proceedings, notice and administration times a fraction where \$7.25
16 million is the numerator and the total settlements in the DRAM Antitrust Litigation of all settling
17 parties whose settlements are included in the coordinated proceedings before the Special Master,
18 notice, and claims administration at the time that the coordinated proceedings occur, coordinated
19 notice is sent, and the coordinated claims administration takes place, is the denominator.
20

21 13d. The motion(s) for approval of the form(s) of notice and method(s) of disseminating
22 notice shall recite and ask the Court to find that any notice of settlement by publication to the
23 Settling Plaintiffs constitutes valid, due and sufficient notice, constitutes the best notice
24 practicable under the circumstances, and complies fully with the requirements of Federal Rule of
25 Civil Procedure 23 and any other applicable law. Notice to the Governmental Purchaser
26

1 Plaintiffs, if required, may differ in form and substance under applicable laws from notice to the
2 Indirect Purchaser Plaintiffs.

3 13e. The claims administrator will be employed by the Settling Plaintiffs. The Settling
4 Plaintiffs will from time to time advise counsel for the Settling Toshiba Defendants as to the
5 status of notice and claims administration, and the costs incurred in that process to date.

6 13f. In no event shall any Settling Toshiba Defendant have any responsibility, financial
7 obligation, or liability whatsoever with respect to the investment, distribution, or administration
8 of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution
9 and administration, with the sole exception of the provisions set forth in Paragraphs 13(b) and
10 13(c) of this Agreement.

11 14. The Settling Parties shall jointly seek entry of an order and final judgment, the text of
12 which the Settling Parties shall agree upon. The terms of that order and final judgment will
13 include, at a minimum, the substance of the following provisions:

14 a. as to the Actions, approving finally this settlement and its terms as being a fair,
15 reasonable and adequate settlement as to the Settling Plaintiffs within the meaning of Rule 23 of
16 the Federal Rules of Civil Procedure or other applicable law and directing its consummation
17 according to its terms, and providing for the release of all claims of the Releasors and the
18 class(es) they represent, as set forth in this Agreement;

19 b. as to the Settling Toshiba Defendants, the Actions be dismissed with prejudice
20 and, except as provided for in this Agreement, without recovery of costs by any party;

21 c. reserving exclusive jurisdiction over this settlement and this Agreement,
22 including the administration and consummation of this settlement to the United States District
23 Court for the Northern District of California;

d. determining under Federal Rule of Civil Procedure 54(b) or 56 that there is no just reason for delay and directing that the judgment of dismissal as to Settling Toshiba Defendants be final;

e. as to the Settling Toshiba Defendants, stating that the Toshiba Defendants contend that they are not liable for the claims being asserted, but nevertheless, to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and because the Toshiba Defendants are no longer in the DRAM business, the Toshiba Defendants have agreed, for a period of three years from the date of execution of this Agreement, to the imposition of an order enjoining and restraining the Settling Toshiba Defendants from engaging in any price fixing, market allocation and bid rigging, with respect to the sale of any DRAM product for delivery in the United States, which constitutes horizontal conduct that are *per se* violations of Section 1 of the Sherman Act, including participating in meetings, conversations, and communications with each other and other DRAM manufacturers (other than among affiliated entities) in the United States and elsewhere to discuss the prices of DRAM to be sold to original equipment manufacturers of personal computers and servers (“OEM customers”) and exchanging information on sales of DRAM to OEM customers, for the purpose of monitoring and enforcing adherence to agreed-upon prices;

f. as to the Settling Toshiba Defendants, requiring them to certify that Toshiba Corporation has an antitrust compliance program and that the Settling Toshiba Defendants do not manufacture or sell DRAM. In the event that any of the Settling Toshiba Defendants manufacture or sell DRAM within three (3) years from the date of this Agreement, they shall (1) establish, if not already established, and maintain a program to provide relevant antitrust compliance education to the Settling Toshiba Defendants' officers and employees with responsibility for pricing and sales of DRAM in and to the United States regarding the legal

1 standards imposed by federal and state antitrust laws, and the Settling Toshiba Defendants shall
2 have ninety (90) days from final approval of the Agreement to establish this program if one has
3 not already been established; and (2) for three (3) years from that date, on an annual basis, each
4 Settling Defendant shall certify to a designated representative of the Settling Plaintiffs that it is
5 fully compliant with the provisions of this paragraph and submit a written report describing the
6 nature of the program it has implemented or is maintaining pursuant to this sub-paragraph. The
7 Settling Plaintiffs are required to provide notice to the Settling Toshiba Defendants that the
8 compliance report is due thirty (30) days prior to the deadline for its submission. Nothing in this
9 provision shall effect a waiver of any privileges otherwise applicable to the content of any
10 antitrust compliance training;

12 g. as to the Settling Toshiba Defendants, staying any action regarding DRAM
13 filed against them by the Settling Plaintiffs while approval of this Agreement is pending within
14 the meaning of paragraph 15;

16 h. Co-Lead Counsel shall file with the Clerk of the Court a record of the Settling
17 Plaintiffs who timely excluded themselves from the settlement, shall provide a copy of the record
18 to counsel for the Settling Toshiba Defendants, and shall maintain the record for a period of five
19 years;

21 i. certifying solely for purposes of this settlement the Class of Indirect Purchaser
22 Plaintiffs defined above;

23 j. certifying solely for purposes of this settlement the Class of Governmental
24 Purchaser Plaintiffs; and

25 k. approving the payment of attorneys' fees as awarded by the Court out of the
26 Settlement Fund.

1 15. This Agreement shall become final when the Court has entered an order and final
2 judgment approving this Agreement under Federal Rule of Civil Procedure 23(e) and/or
3 applicable state laws and dismissing the Actions with prejudice as to the Settling Toshiba
4 Defendants against the Settling Plaintiffs and one of the following dates occurs: (a) if an appeal is
5 taken, (i) the date of final affirmance on appeal of the order and final judgment, the expiration of
6 the time for a petition for or a denial of a writ of *certiorari* to review the order and final judgment
7 and, if *certiorari* is granted, the date of final affirmance of the order and final judgment following
8 review pursuant to that grant, or (ii) the date of final dismissal of any appeal from the order and
9 final judgment or the final dismissal of any proceedings on *certiorari* to review the order and
10 final judgment or the final dismissal of any proceedings on *certiorari* to review the order and
11 final judgment; or (b) if no appeal is filed, the expiration date of the time for the filing or noticing
12 of any appeal from the order and final judgment, i.e., thirty (30) days after entry of the order and
13 final judgment. This Agreement shall be deemed executed as of the last date of signature by the
14 Settling Toshiba Defendants and Co-Lead Counsel, and Co-Lead Counsel shall give notice to the
15 Settling Toshiba Defendants within three (3) business days after the Agreement is deemed
16 executed. The date of execution of this Agreement shall not be extended in the event that any
17 other State, which is currently a plaintiff in *State of California, et al. v. Infineon Technologies*
18 *AG, et al.*, Case No. C 06-4333 PJH (N.D. Cal.), *State of New York v. Micron Technology, Inc., et*
19 *al.*, Case No. C-06-6436 PJH (N.D. Cal.), or the complaint to be filed against Settling Toshiba
20 Defendants contemporaneously with this Agreement by Plaintiff States, et al., signs and agrees to
21 be bound by this Agreement. As of the date of execution of this Agreement, the Settling Parties
22 shall be bound by the terms of this Agreement and this Agreement shall not be rescinded except
23 in accordance with paragraphs 25 or 31 of this Agreement.

24 16. Neither this Agreement (whether or not it should become final) nor the order or final
25 judgment provided for in Paragraph 14, nor any and all negotiations, documents and discussions
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1 associated with such negotiation, shall be deemed or construed to be an admission by or form the
2 basis of an estoppel by a third party against any of the Settling Toshiba Defendants or any of the
3 Settling Toshiba Defendant Releasees, or evidence of any violation of any statute or law or of any
4 liability or wrongdoing whatsoever by any of the Settling Toshiba Defendants or any of the
5 Settling Toshiba Defendant Releasees, or of the truth of any of the claims or allegations contained
6 in any complaint or any other pleading filed by the Settling Plaintiffs in the Actions, and evidence
7 thereof shall not be discoverable, or used directly or indirectly, in any way, whether in the
8 Actions or in any other action or proceeding. Neither this Agreement, nor any of its terms and
9 provisions, nor any of the negotiations or proceedings connected with it, nor any action taken to
10 carry out this Agreement by any of the Settling Plaintiffs or the Settling Toshiba Defendants shall
11 be referred to, offered into evidence or received in evidence in any pending or future civil,
12 criminal or administrative action or proceeding, except in a proceeding to enforce this Agreement,
13 or to defend against the assertion of Released Claims, or as otherwise required by law.

C. Release, Discharge, and Covenant Not to Sue.

17. In addition to the effect of any final judgment entered in accordance with this
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19 Agreement, upon this Agreement becoming final as set out in paragraph 15 of this Agreement,
20 and in consideration of payment of the Settlement Fund, and for other valuable consideration, the
21 Settling Toshiba Defendant Releasees shall be completely released, acquitted, and forever
22 discharged from any and all claims, demands, actions, suits, causes of action, whether class,
23 individual, or otherwise in nature (whether or not any Settling Plaintiff has objected to the
24 settlement or makes a claim upon or participates in the Settlement Fund), whether directly,
25 representatively, derivatively or in any other capacity, that Releasors, or each of them, ever had,
26 • now has, or hereafter can, shall, or may have on account of, related to, or in any way arising out
27 of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries,
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1 damages, and the consequences thereof in any way arising out of or relating in any way to any act
2 or omission of the Settling Toshiba Defendant Releasees (or any of them) concerning the pricing,
3 production, development, or sale of DRAM products or products containing DRAM up to
4 December 31, 2002, including claims based on the conduct alleged and causes of action asserted
5 or that could have been asserted, in complaints filed in the Actions by the Settling Plaintiffs, or in
6 any similar action filed in any federal or state court, including, without limitation, any claims
7 arising under any federal or state antitrust, unjust enrichment, unfair competition, trade practice
8 statutory or common law, and consumer protection law (to the extent that a consumer protection
9 claim would be based on allegations of an antitrust or unfair competition violation) (the
10 "Released Claims"). For the avoidance of doubt, the Released Claims do not include any claims
11 relating to price-fixing, output limitation, bid-rigging, or market allocation on Cathode Ray Tubes
12 ("CRTs") or Liquid Crystal Displays ("LCDs"). Releasors shall not, after the date of this
13 Agreement, seek to establish liability against any Settling Toshiba Defendant Releasees based, in
14 whole or in part, upon any of the Released Claims, or conduct at issue in the Released Claims.
15 The Settling Parties contemplate and agree that this Agreement may be pleaded as a bar to a
16 lawsuit, and an injunction may be obtained, preventing any action from being initiated or
17 maintained in any case sought to be prosecuted on behalf of indirect DRAM purchasers with
18 respect to the claims released in this paragraph.
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20 18. In addition to the provisions of paragraph 17 of this Agreement, Releasors hereby
21 expressly waive and release, upon this Agreement becoming final, any and all provisions, rights,
22 and benefits conferred by § 1542 of the California Civil Code, which states:
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24 **CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.** A
25 GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
26 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN
27 HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
28 RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
2 THE DEBTOR;

3 or by any law of any state or territory of the United States, or principle of common law, which is
4 similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may
5 hereafter discover facts other than or different from those which he, she, or it knows or believes to
6 be true with respect to the claims which are the subject matter of the provisions of paragraph 17
7 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever
8 settles and releases, upon this Agreement becoming final, any known or unknown, suspected or
9 unsuspected, contingent or non-contingent claim with respect to the subject matter of the
10 provisions of paragraph 17 of this Agreement, whether or not concealed or hidden, without regard
11 to the subsequent discovery or existence of such different or additional facts.

12 19. The release, discharge, and covenant not to sue set forth in paragraph 17 of this
13 Agreement does not include claims by any of the Settling Plaintiffs other than the claims set forth
14 therein, such as those solely arising out of product liability or warranty claims in the ordinary
15 course of business.

16 20. The Settling Toshiba Defendants agree to cooperate with the Settling Plaintiffs by: (a)
17 meeting and conferring in good faith to attempt to reach agreement about making their
18 appropriate current employees available for deposition and trial according to a reasonable
19 schedule; (b) upon request, providing the last-known contact information for any potentially
20 relevant former employees; and (c) producing in person at trial, deposition, or by affidavit,
21 whichever is legally necessary, representatives to establish for admission into evidence the
22 amount of their respective relevant sales and to testify as to the genuineness, status as business
23 records, and authenticity of documents. Settling Toshiba Defendants represent that, upon request
24 by Settling Plaintiffs, and while being afforded a reasonable time to comply, they will produce
25 any documents and data previously produced to any United States grand jury which is
26 investigating or has investigated the DRAM price-fixing conspiracy in the Northern District of
27 California as well as any documents or data previously produced in any DRAM-related
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proceeding filed or consolidated in Judge Hamilton's court in the Northern District of California. The cooperation obligations provided for in this paragraph 20 shall come into effect only if: (1) the Settling Plaintiffs file a complaint that is not settled prior to the request for cooperation against a current or former DRAM manufacturer other than the Settling Toshiba Defendants, alleging price-fixing claims arising from the same purported conduct at issue in the Actions and this Agreement has not been terminated as to the Settling Toshiba Defendants; or (2) any of the Samsung, Winbond, Multi-Defendant or Nanya Settlement Agreements does not become final, and litigation resumes as to one or more of those Defendants. Notwithstanding the foregoing, if a case resulting from the occurrence of (1) or (2) proceeds to discovery, the cooperation obligations provided for in this paragraph 20 shall not come into effect until 120 days before the close of discovery; and, if a case resulting from the occurrence of (1) or (2) proceeds straight to motion practice and/or trial, without discovery, there shall be no delay in the effective date of the cooperation obligations provided for in this paragraph 20. In any event, the cooperation obligations set forth in this paragraph will expire after three (3) years of the date of the execution of this Agreement.

D. Settlement Amount

21. Subject to the provisions hereof, and in full, complete and final settlement of the Actions as provided herein, the Settling Toshiba Defendants shall pay:

- (a) \$7,250,000 in United States funds; and
- (b) a deposit of \$200,000 for the Settling Toshiba Defendants' share of the costs of the Special Master, notice,

and claims administration, as provided in paragraphs 13 and 26 of this Agreement. The Settling Toshiba Defendants shall pay the amounts set forth in the foregoing subparagraphs (a) and (b) above by wire transfer into the Settlement Fund Escrow Account (as provided in this Agreement and/or by any subsequent Escrow Instructions agreed to by the Parties) within thirty (30) days following receipt by the Settling Toshiba Defendants of final escrow instructions. The Settlement

1 Fund shall be held by the Escrow Agent (and may be divided pursuant to the instructions in the
2 Escrow Agreement), pursuant to the agreement of the parties that 8/9ths of the Settlement Fund
3 shall be for the benefit of the Indirect Purchaser Plaintiffs and 1/9th of the Settlement Fund shall
4 be for the benefit of the Governmental Purchaser Plaintiffs, which amounts shall include any
5 allocated attorneys' fees. Any division of the Settlement Fund by the Escrow Agent into separate
6 funds, consistent with the Escrow Agreement, shall not affect those provisions of this Agreement
7 that are applicable to the Settlement Fund as a whole. The Settlement Fund shall also be
8 administered in accordance with the provisions of paragraph 23 of this Agreement (the "Escrow
9 Account(s)").

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11 22. If any State who is a plaintiff in *State of California et. al. v. Infineon Technologies et. al.*, Case No. C-06-4333 PJH (N.D. Cal.), *State of New York v. Micron Technology, Inc., et al.*, Case No. C-06-6436 PJH (N.D. Cal.) or in the complaint to be filed against Settling Toshiba Defendants contemporaneously with this Agreement by Plaintiff States, et al. does not accept the terms of this Agreement and/or does not sign on to the Agreement within thirty (30) days of it becoming executed (as defined in paragraph 15), it will be deemed to have rejected the Agreement. In that case, or for any other reason that this Agreement does not become effective as to any State who is a plaintiff in *State of California et. al. v. Infineon Technologies et. al.*, Case No. C-06-4333 PJH (N.D. Cal.), *State of New York v. Micron Technology, Inc., et al.*, Case No. C-06-6436 PJH (N.D. Cal.), or in the complaint to be filed against Settling Toshiba Defendants contemporaneously with this Agreement by Plaintiff States, et al., 1/9th of each payment that is for the benefit of the Governmental Purchaser Plaintiffs shall be reduced by a percentage equal to any such rejecting State's share of that fund. Any such share shall be determined on the same basis as that used for such allocation among the Governmental Purchaser Plaintiffs of the proceeds of the Samsung, Winbond, Multi-Defendant and Nanya Settlement Agreements. If any payments have been made for which a reduction is subsequently calculated pursuant to this paragraph, the amount of the reduction for any such State's share (plus any accrued interest on

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that share) shall be promptly refunded to the Settling Toshiba Defendants who have made such payments, less the proportionate amount of expenses incurred for class notice, claims administration, settlement administration, or for taxes, or any other expenses incurred by the Settlement Fund as of that date.

23. Escrow Account(s).

(a) The Escrow Account referenced in paragraph 21 will be established at a bank to be agreed by Settling Parties, with such bank serving as escrow agent (“Escrow Agent”) subject to escrow instructions as agreed by the Settling Parties. The separately executed Escrow Agreement will require the Escrow Agent to (1) create and maintain any Settlement Fund in one or more segregated trust accounts and (2) to maintain fiduciary insurance sufficient to protect against an unforeseen loss of the Escrow Account. The Escrow Agent may establish, pursuant to the instructions in the Escrow Agreement, one or more escrow accounts consistent with the agreement of the parties that 8/9ths of the Settlement Fund shall be for the benefit of the Indirect Purchaser Plaintiffs and 1/9th of the Settlement Fund shall be for the benefit of the Governmental Purchaser Plaintiffs. Such Escrow Account or Accounts and any subsequently established escrow accounts are to be administered under the Court's continuing supervision and control.

(b) The Escrow Agent shall cause the funds deposited in the Escrow Account(s) to be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or money market funds invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then current market rates.

(c) All funds held in the Escrow Account(s) shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such

1 time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the
2 Court.

3 (d) The Settling Parties agree to treat the Settlement Fund as being at all times one or
4 more “qualified settlement funds” within the meaning of Treas. Reg. §1.468B-1 and to refrain
5 from taking any action inconsistent with such treatment.

6 (e) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the
7 regulations promulgated thereunder, the “administrator” shall be the Escrow Agent for each
8 Escrow Account and shall promptly take all steps necessary so that the Settlement Fund qualifies
9 as one or more “qualified settlement funds” within the meaning of Treas. Reg. § 1.468B-1. These
10 steps include, without limitation, the following:

11 (i) the Escrow Agent shall timely and properly prepare a statement fulfilling
12 the requirements of Treas. Reg. § 1.468B-3(e) on behalf of the Settling Toshiba Defendants; and

14 (ii) the Escrow Agent shall timely and properly file all informational and
15 other tax returns necessary or advisable with respect to the Settlement Fund (including without
16 limitation the returns described in Treas. Reg. §1.468B-2(k)(l)). Such returns (as well as the
17 election described below) shall be consistent with the provisions of paragraph 23.

19 In addition to the above, the Escrow Agent shall timely make such elections as necessary or
20 advisable to carry out the provisions of paragraph 23. Without limiting the generality of the
21 foregoing, the Escrow Agent and the Settling Toshiba Defendants agree that they will jointly
22 make the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest
23 permitted date. All elections shall be made in compliance with the procedures and requirements
24 contained in the applicable Treasury regulations. It shall be the responsibility of the Escrow
25 Agent to timely and properly prepare and deliver the necessary documentation for signature by all
26 necessary parties, and thereafter to cause the appropriate filing to occur.

(f) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund ("Taxes"), (ii) taxes, interest, penalties, or other tax detriments that may be imposed upon Settling Toshiba Defendants or any other Settling Toshiba Defendant Releasee with respect to (A) any income earned by the Settlement Fund or (B) the receipt of any payment under this paragraph 23(f)(ii), in each case for any period during which the Settlement Fund does not qualify as one or more "qualified settlement funds" for federal or state income tax purposes ("Tax Detriments"); and (iii) expenses and costs incurred in connection with the operation and implementation of paragraphs 23(d) through 23(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in paragraph 23(e) ("Tax Expenses"), shall be paid out of the Settlement Fund.

(g) Neither Settling Toshiba Defendants nor any other Settling Toshiba Defendant Releasee nor their respective counsel shall have any liability or responsibility for the Taxes, Tax Detriments, or the Tax Expenses. Taxes, Tax Detriments, and Tax Expenses shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes, Tax Detriments, and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)). Neither Settling Toshiba Defendants nor any other Settling Toshiba Defendant Releasee is responsible nor shall they have any liability therefore. Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of paragraphs 23(d) through 23(g).

(h) If this Agreement does not receive final Court approval, or if for any other reason this Agreement terminates, then all amounts paid by Settling Toshiba Defendants into the Settlement Fund shall be promptly returned to Settling Toshiba Defendants from the Escrow Account(s) by the Escrow Agent along with any interest accrued thereon less the Settling Toshiba Defendants' share of any expenses incurred prior to that date for taxes, class notice, claims administration, or settlement administration or any other expenses incurred by the Settlement Fund.

24. Exclusions. Co-Lead Counsel, in conjunction with the settlement administrator, shall cause copies of requests for exclusion from the settlement classes to be provided to counsel for the Settling Toshiba Defendants as they are received. The Settling Plaintiffs may not exclude themselves by filing such requests for exclusion as a group, but must in each instance individually execute such notices. No later than ten (10) days after the final date for mailing requests for exclusion, Co-Lead Counsel shall provide counsel for the Settling Toshiba Defendants with a complete and final list of opt-outs. The proposed order contemplated by paragraphs 12 and 14 of this Agreement shall allow the Settling Parties to seek discovery from opt-outs to obtain information sufficient to calculate opt-out DRAM purchases.

25. Opt-Out Termination Rights. In the event that the Settling Toshiba Defendants determine that valid and timely requests for exclusion have been made by multiple Settling Plaintiffs such that they believe in good faith that there is a risk that they will be forced to defend substantial litigation with respect to claims by opt-outs, they, in their discretion, acting in good faith, and after meeting and conferring with Co-Lead Counsel, may elect to terminate this Agreement by serving written notice of such election on Co-Lead Counsel by facsimile and overnight courier and by filing a copy of such notice with the Court no later than the twentieth day from the day on which the Settling Toshiba Defendants receive the final opt-out list. In the event that one or more Settling Toshiba Defendants exercise their option to terminate this

1 Agreement: (a) this Agreement shall be null and void, and shall have no force or effect and shall
2 be without prejudice to the rights and contentions of the Settling Toshiba Defendants, the Settling
3 Toshiba Defendant Releasees, and Settling Plaintiffs in this or any other litigation; and (b) the
4 Settlement Fund paid by the Settling Toshiba Defendants, plus interest thereon, shall be refunded
5 promptly to them, minus such Toshiba Settling Defendant's percentage (as set forth in this
6 Agreement) of expenses incurred for taxes, Special Master, class notice, claims administration, or
7 settlement administration costs or any other expenses incurred by the Settlement Fund, and the
8 Escrow Agent shall be promptly so notified and instructed.

10 26. Payment of Expenses. As set forth in Paragraph 21, the Settling Toshiba Defendants
11 agree to deposit in the Settlement Fund Escrow Account \$200,000 as an advance for their share of
12 the services of the Special Master, notice, and claims administration costs. After that deposit is
13 made, that portion of the Settlement Fund may be disbursed, with prior notice to counsel for
14 Toshiba, to satisfy the cost of coordinated proceedings before the Special Master, notice, and
15 claims administration, as provided in paragraph 13(b) and (c). After this Agreement becomes
16 final within the meaning of paragraph 15, all court ordered disbursements, including attorneys'
17 fees and litigation costs, may be made from the Settlement Fund. Other than as set forth in this
18 paragraph 26, neither Settling Toshiba Defendants nor any of the other Settling Toshiba
19 Defendant Releasees under this Agreement shall be liable for any of the costs or expenses of the
20 litigation of the Actions, including, without limitation, attorneys' fees, fees and expenses of
21 expert witnesses and consultants, and costs and expenses associated with discovery, motion
22 practice, hearings before the Court or any Special Master, appeals, trials or the negotiation of
23 other settlements, or for costs of the Special Master, notice, and class administration. Pursuant to
24 paragraph 13(b), any portion of the Settling Toshiba Defendants' payment of expenses not
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actually used to pay costs of the Special Master, notice, and administration shall be refunded to the Settling Toshiba Defendants.

E. The Settlement Fund

27. Except as expressly provided in paragraphs 13 and 26 of this Agreement with respect to Toshiba's payment of notice and claims administration costs, Releasors shall look solely to the Settlement Fund for settlement and satisfaction against the Settling Toshiba Defendant Releasees of all Released Claims, and shall have no other recovery against the Settling Toshiba Defendants or any other Settling Toshiba Defendant Releasee.

28. After this Agreement becomes final within the meaning of paragraph 15, the Settlement Fund shall be distributed in accordance with plans for direct distributions, *cy pres*, or as otherwise permitted by law, all to be submitted at the appropriate time by the Settling Plaintiffs and (following a report and recommendation by the Special Master) approved by the Court. Neither Settling Toshiba Defendants nor any other Settling Toshiba Defendant Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to, or shall file any opposition to, the proposed or actual plan(s) for distribution of the Settlement Fund among the Settling Plaintiffs and/or any other person or entity who may assert some claim to the Settlement Fund.

29. It is contemplated that Settling Plaintiffs' counsel will seek attorneys' fees award(s) and reimbursement of costs and expenses (including expert witness fees and expenses) from the Settlement Fund. It is further contemplated that counsel for the Indirect Purchaser Plaintiffs may seek class representative incentive awards in amounts to be approved by the Court. The Indirect Purchaser Plaintiffs and their counsel reserve all rights regarding the propriety of any request for or award of attorneys' fees or reimbursement of costs and expenses to the Attorneys General and/or their counsel. The Attorneys General reserve all rights regarding the propriety of any

request for or award of attorneys' fees, reimbursement of costs and expenses or any class representative incentive awards to Indirect Purchaser Plaintiffs and/or their counsel. Settling Toshiba Defendants shall take no position on any application for attorneys' fees, reimbursement of costs and expenses or class representative incentive awards. After the entry of any order awarding attorneys' fees, reimbursement of costs and expenses or class representative incentive awards, the Escrow Agent may, pursuant to paragraph 23, establish and maintain sub-accounts to hold such awards for: (1) counsel for the Indirect Purchaser Plaintiffs; (2) Attorney(s) General or their counsel; and (3) for class representative incentive awards. Subject to the foregoing reservation of rights, and subject to Court approval, any amounts awarded or distributed by the Court to counsel for the Attorneys General may be used for any of the following purposes, within the limits of applicable law:

(a) Reimbursement of attorneys' fees and expenses incurred in the prosecution of the Actions;

(b) Deposit into a state antitrust or consumer protection account (e.g., revolving account, trust account) for use in accordance with the laws governing the account;

(c) Deposit into a fund exclusively dedicated to assisting the state Attorneys General to defray the costs of experts, economists and consultants in multistate antitrust investigations and litigations; or

(d) Antitrust or consumer protection enforcement by the Attorney General of such State.

30. The procedure for and the allowance or disallowance by the Court of the petitions for awards of attorneys' fees and the reimbursement of costs and expenses is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of this Agreement, and any order or proceeding relating to the fee application(s) or any appeal from any such order shall not operate to terminate or cancel this Agreement, or affect or delay the

1 finality of the Judgment approving the settlement. Except as expressly provided in this
2 Agreement, no Settling Toshiba Defendant or any other Settling Toshiba Defendant Releasee
3 under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with
4 respect to any payment to counsel for the Settling Plaintiffs of any fee award in the Actions.
5 Neither Settling Toshiba Defendants nor any other Settling Toshiba Defendant Releasee under
6 this Agreement shall have any responsibility for, or interest in, or liability whatsoever with
7 respect to the allocation among counsel for the Settling Plaintiffs, and/or any other person or
8 entity who may assert some claim thereto, of any fee award that the Court may make in the
9 Actions.

11 F. Rescission if the Agreement is Not Approved or Final Judgment is
12 Not Entered

13 31. If the Court refuses to approve this Agreement or any material part hereof, or if such
14 approval is materially modified or set aside on appeal, or if the Court does not enter the final
15 judgment provided for in paragraph 14 of this Agreement, or if the Court enters the final
16 judgment and appellate review is sought, and on such review, such final judgment is not affirmed
17 in its entirety, then Settling Toshiba Defendants and the Settling Plaintiffs shall each, in their sole
18 discretion, have the option to rescind this Agreement in its entirety. Written notice of the exercise
19 of any such right to rescind shall be made according to the terms of paragraph 25 within thirty
20 (30) days of the event triggering the right to rescind. A modification or reversal on appeal of any
21 amount of the fees for counsel for the Settling Plaintiffs shall not be deemed a modification of all
22 or a part of the terms of this Agreement or such final judgment.

23 32. In the event that this Agreement does not become final, then this Agreement shall be
24 of no force or effect (except for this paragraph and paragraph 16) and any and all parts of the
25 Settlement Fund caused to be deposited in the Escrow Account(s), including all interest earned on
26 such accounts, shall be returned forthwith to the Settling Toshiba Defendants less only
27 disbursements made in accordance with this Agreement. The Settling Parties expressly reserve

1 all of their rights if this Agreement does not become final. Further, and in any event, the Settling
2 Parties agree that this Agreement, whether or not it shall become final, and any and all
3 negotiations, documents, and discussions associated with its negotiation, shall not be deemed or
4 construed to be an admission or evidence of any violation of any statute or law or of any liability
5 or wrongdoing by the Settling Toshiba Defendants or the Settling Toshiba Defendant Releasees,
6 or of the truth of any of the claims or allegations contained in the complaints or any other
7 pleadings filed by the Settling Plaintiffs in the Actions, and evidence thereof shall not be
8 discoverable or used directly or indirectly, in any way, whether in the Actions or in any other
9 action or proceeding.

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12 33. This Agreement shall be construed and interpreted to effectuate the intent of the
13 Settling Parties, which is to provide, through this Agreement, for a complete resolution of the
14 relevant claims with respect to each Settling Toshiba Defendant Releasee as provided in this
15 Agreement.

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17 34. The Parties to this Agreement contemplate and agree that, prior to final approval of
18 the Settlement as provided for in paragraph 15 of this Agreement, appropriate notice (1) of the
19 Settlement; (2) of a hearing at which the Court will consider the approval of the Agreement; (3) that
20 Settling Plaintiffs may be permitted to exclude themselves from the Settlement; and (4) that
21 Settling Plaintiffs' counsel have filed a petition to be awarded attorneys' fees, will be given to the
22 Settling Plaintiffs.

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G. Miscellaneous

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25 35. This Agreement does not settle or compromise any claim by the Settling Plaintiffs
26 against any defendant or alleged co-conspirator other than the Settling Toshiba Defendants and
the Settling Toshiba Defendant Releasees. All rights against such other defendants or alleged co-
conspirators are specifically reserved by Settling Plaintiffs.

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28 36. Neither this Agreement, nor any act performed or document executed pursuant to or
in furtherance of this Agreement is or may be deemed to be or may be used as an admission of, or

1 evidence of, (i) the validity of any claim or defense; or (ii) the appropriateness or
2 inappropriateness of any class or other representational capacity whether contemporaneously with
3 this Agreement or at any time in the future.

4 37. Except as otherwise set forth herein, this Agreement shall not affect whatever rights
5 Releasors or any of them may have: (i) to participate in or benefit from, where appropriate, any
6 relief or other recovery as part of a settlement or judgment in any action on behalf of any direct
7 purchasers of DRAM; (ii) to participate in or benefit from any relief or recovery as part of a
8 judgment or settlement in these Actions against any other party named as a defendant (other than
9 the Settling Toshiba Defendants or a Settling Toshiba Defendant Releasee); or (iii) to assert any
10 claims that are not released in this Agreement.

11 38. The United States District Court for the Northern District of California shall retain
12 jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall
13 have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating
14 to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation
15 and agreement by the Settling Parties. This Agreement shall be construed according to the laws
16 of the State of California without regard to its choice of law or conflict of laws principles.

17 39. This Agreement constitutes the entire, complete and integrated agreement between
18 the Settling Parties pertaining to the settlement of the Actions against the Settling Toshiba
19 Defendants, and supersedes all prior and contemporaneous undertakings of the Settling Parties in
20 connection herewith. This Agreement may not be modified or amended except in writing
21 executed by the Settling Parties, and approved by the Court.

22 40. This Agreement shall be binding upon, and inure to the benefit of, the successors and
23 assigns of the Settling Parties. Without limiting the generality of the foregoing, each and every
24 covenant and agreement made herein by the Settling Plaintiffs shall be binding upon all classes
25 and Releasors. The Settling Toshiba Defendant Releasees (other than the Settling Toshiba
26 Defendants, which are parties hereto) are third party beneficiaries of this Agreement and are
27 authorized to enforce its terms applicable to them.

1 41. This Agreement may be executed in counterparts by the Settling Plaintiffs and the
2 Settling Toshiba Defendants, and a facsimile signature shall be deemed an original signature for
3 purposes of executing this Agreement.

4 42. Neither the Settling Plaintiffs nor the Settling Toshiba Defendants shall be considered
5 to be the drafters of this Agreement or any of its provisions for the purpose of any statute, case
6 law, or rule of interpretation or construction that would or might cause any provision to be
7 construed against the drafter of this Agreement.

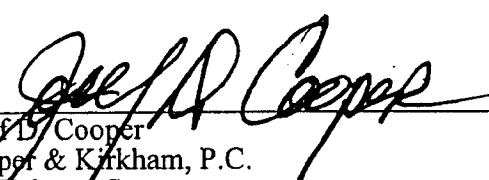
8 43. The descriptive headings of any paragraphs or sections of this Agreement are inserted
9 for convenience only and do not constitute a part of this Agreement.

10 44. Where this Agreement requires either party to provide notice or any other
11 communication or document to the other, such notice shall be in writing, and such notice,
12 communication, or document shall be provided by facsimile or letter by overnight delivery to the
13 undersigned counsel of record for the party to whom notice is being provided.

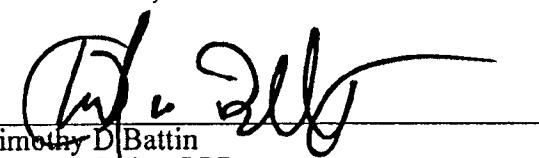
14 45. Each party and their counsel agree to do anything reasonably necessary to effectuate
15 the performance of, and uphold the validity and enforceability of, this Agreement.

16 46. Each of the undersigned attorneys represents that he or she is fully authorized to enter
17 into the terms and conditions of, and to execute, this Agreement on behalf of the Settling Parties
18 he or she represents, subject to Court approval.

19 Dated: 8/22/12

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24 San Francisco, CA 94103-4192

25 Dated: 8/22/12

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Dated: 8/21/12



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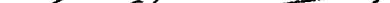
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TOSHIBA CORPORATION

Dated: _____ By: Yasuo Iwamuro

**TOSHIBA AMERICA ELECTRONIC
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Dated: 9/21/2012 By: 

Dated: 10/11/2012

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Dated: August 30 2012

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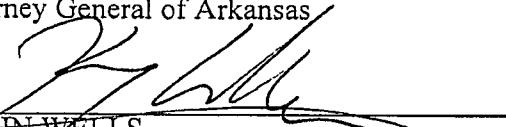
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2 Dated: 8/29/12
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2 Dated: 9-12-12
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2 Dated: 8-22-12

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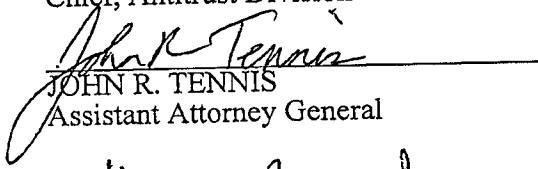
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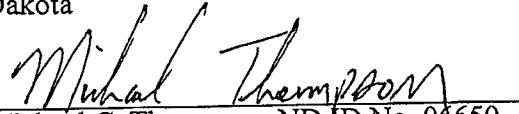
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2 Dated: 8-21-2012
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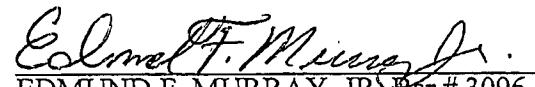
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2 Dated: 8/24/12

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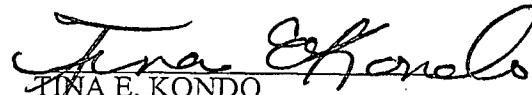
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2 Dated: 8/22/12

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7 Virginia

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2 Dated: August 22, 2012
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